

Surfrider Guide to NEPA and EISs

It is important for Surfrider activists to have a basic understanding of the National Environmental Policy Act (NEPA), since NEPA is the piece of Federal legislation that requires consideration of environmental consequences of a project before the project can begin. If a study indicates that there are undesirable environmental consequences of a proposed project, NEPA requires either that consideration be given to “mitigating” measures built into the project that would lessen the environmental damage, or that alternatives (different ways of accomplishing the project goals) be considered that would be less damaging to the environment.

Prior to about 1970, there was no requirement that environmental consequences of projects be considered. NEPA was passed in 1969 and shortly thereafter several states, including California and Maryland, passed similar laws. California’s legislation is the California Environmental Quality Act (CEQA), passed in 1970. The environmental study required by NEPA is called an Environmental Impact Statement (EIS), while the study required by CEQA is called an Environmental Impact Report (EIR). If these laws had been in effect earlier, thousands of acres of wetlands that were destroyed for highways and housing projects might have been saved. Many coastal structures that have destroyed surf spots and exacerbated coastal erosion may not have been built.

NEPA applies to any major Federal action (a project undertaken by a Federal agency such as the U.S. Army Corps of Engineers) that may have an impact on the environment. It also applies to local (state, county, city, or industrial) projects that require a Federal permit or receive funding from a Federal agency. Local projects that do not trigger the requirements of NEPA may still require an environmental review if they are performed in states that have similar laws. In California, CEQA applies to projects undertaken by state and local public agencies that must receive approval from a government agency which can cause either a direct physical change in the environment or a predicted indirect change in the environment. For both NEPA and CEQA, not only projects, but also government programs, decisions, and plans which may not immediately result in physical development (such as a general or community plan), require an environmental study.

The public, including Surfrider activists, have an important role in the NEPA or CEQA process, particularly during “scoping”, an initial phase of project planning where public input is sought on what issues should be addressed in the EIS or EIR and what other alternatives to the proposed project might be considered. After draft environmental study documents are produced, we can provide written or oral comments on these documents. The comments must be addressed in the final EIS or EIR. Surfrider activists can provide important information that the general public and the project proponents may not be aware of. This information may include the location of coastal access routes used by surfers that may be lost as part of the project, the importance of a surf break that may be destroyed or altered, water quality impacts of a project, and increased coastal erosion that may be caused by building coastal structures or otherwise interrupting the natural supply of sand to a beach. Due, in part, to the precedent set by the Pratte’s Reef case in Southern

California, waves are considered to be natural resources whose potential loss must be considered as part of an environmental study of a coastal project.

The basic process of NEPA compliance usually begins with the project proponent meeting with the Federal Agency that is sponsoring the EIS to define and discuss the project, existing site conditions, known feasible alternatives, and previous studies and reports relevant to the project. The methodology of completing the EIS is then submitted and approved. Then prior to holding a scoping meeting, a brief Preliminary Environmental Analysis (PEA) may be prepared. The PEA would then serve as a handout at the scoping meeting. A Notice of Preparation (NOP) of the EIS then is sent to interested parties and may be published in newspapers. The NOP may also announce the date and location of the scoping meeting. At the scoping meeting the proposed project is described, alternatives to be considered in the EIS may also be described, and public input is requested regarding important issues to be addressed. The product of the scoping meeting is a brief Scoping Report that summarizes the significant alternatives and issues related to them. Comments received from the public are typically included in this report.

Preparation of a draft EIS typically takes several months. The basic steps are data collection, assessment of potential environmental impacts, and preparation of the report. Data collection includes information related to the Natural Environment (local climatology, topography, geology, soils, and biology) and the Person-Made Environment (water quality, noise, air quality, land use, historic preservation and archaeology, demography, housing, local economy and other socioeconomic aspects, hazards and nuisances, aesthetics and urban design, community services, and transportation). The potential impacts of each project alternative are assessed as well as for the “No Project” or “Do Nothing” alternative. Both short term (during the construction phase) and long term impacts are assessed. These impacts are characterized as “avoidable”, “unavoidable”, and “capable of being mitigated”. When the draft EIS is completed, it is released for public review and comment. The comment period is usually 45 days, but may be longer. Comments are normally submitted in writing, but there may also be a public meeting where oral comments are accepted. The final EIS is then prepared, which must include a response to any substantive public comments received.

Public comment may help shape the proposed project into one that is more acceptable (less damaging to the environment), may help indicate that an alternative is preferable to the original project, or (in rare instances) may cause the project proponent to abandon the project.

In some cases, the EIS process is short-circuited. If the project proponent feels that there are very few or no adverse environmental effects of the project, he may decide to prepare an Environmental Assessment (EA) rather than an EIS. The EA relies only on existing published data and is a much briefer document than the EIS. Also, no scoping meeting is

required. The EA is reviewed by the lead regulatory agency and if there appear to be no environmental impacts worth considering, a Finding of No Significant Impact (FONSI) is

issued and the project moves ahead. On the other hand, if the lead regulatory agency determines that there may be negative impacts, they will order that an EIS be prepared. Surfrider activists should be alert to the possibility of a project proponent trying the EA/FONSI approach to get fast approval of a project. If there are environmental impacts from a project that are not adequately described or considered in the EA, this can be legally challenged to force preparation of an EIS.

CEQA and EIRs

In California, the CEQA process is very similar to the national NEPA process. Terminology for the different documents and process steps is discussed below. An evaluation of a project starts with the conduct of an Initial Study. Based on the results of the Initial Study, three courses of action are possible:

- If the Initial Study finds no significant impacts, a Negative Declaration is prepared and, after approval by the lead regulatory agency, the project can proceed.
- A Mitigated Negative Declaration can be prepared if the Initial Study finds significant impacts but the project is revised to avoid or mitigate those impacts. Again, the project may proceed after the lead regulatory agency approves this document.
- If significant impacts are identified, an Environmental Impact Report (EIR) is prepared.

As with the EIS, preparation of the EIR involves a scoping meeting; data collection; evaluation of impacts for the proposed project, one or more alternative projects, and a “no project” alternative; preparation of a draft EIR; a public comment period; and preparation of the final EIR. The attached figure shows the CEQA process for evaluation of projects that have the potential for significant environmental impacts.

How Do I Find Out About Planned Projects?

Unfortunately, there is no single information source to find out about upcoming projects and the preparation of NEPA or CEQA documents. The best way is to be a regular participant in your local government. Attend city council meetings. Most cities and counties have web sites where you can look for announcements of new projects, view the agendas of upcoming meetings, and the minutes of past meetings. You may be able to get on an electronic mailing list or a regular mail list to receive meeting announcements, agendas, and meeting minutes. These documents are typically also available at your local city hall and county administrative offices.

For federal projects, the lead agency is often the U.S. Army Corps of Engineers.

Checking their web site at

<http://www.usace.army.mil/public.html#Environmental>

and/or the web sites of your regional EPA office

<http://www.epa.gov/epahome/aboutepa.htm#regiontext>

or local environmental agencies may allow you to receive advance warning of the preparation of NEPA or state equivalent documents.



